(2006) 11 CAL CK 0044

In the Calcutta High Court

Case No : F.M.A. No. 640 of 2004

Alpana Das and Others APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Railways Accidents and Untoward Incidents (Compensation) Rules, 1990 — Rule 3, 4
Railways Act, 1989 — Section 124A

Citation : (2007) ACJ 2195

Hon'ble Judges : Prabir Kumar Samanta, J;P.N. Sinha, J

Bench : Division Bench

Advocate : Krishanu Banik, for the Appellant;Asit Kumar Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Prabir Kumar Samanta, J.—This appeal arises out of a judgment and order passed by the Railway Claims Tribunal, Kolkata Bench, thereby awarding compensation amounting to Rs. 2,00,000 to the claimants-appellants.

2. The claimants-appellants are the widow and the children of the deceased Bijay Das who was a rickshaw puller and on the date of the accident he was aged about 24 years. The said deceased was travelling from Belgharia to Sealdah by local train. He accidentally fell down from the running train in between Belgharia and Dumdum Railway Stations due to heavy rush and sudden jerk and died on the spot.

3. At the hearing of the aforesaid claim case, respondent Railways did not dispute the fact that the death was occasioned due to the accidental falling of the deceased from a train carrying passengers.

4. The Claims Tribunal determined the compensation payable to the claimants-appellants at Rs. 2,00,000 by holding on the basis of the evidence of the claimants-appellants that the deceased had an earning at the rate of Rs. 3,000

p.m. as a rickshaw puller at the relevant time.

5. In this appeal while the claimants-appellants upon reference to Part 1 of the Schedule appended to Railway Accidents and Untoward Incidents (Compensation) Rules, 1990, has contended that as per the amended Schedule the amount of compensation ought to have been determined at Rs. 4,00,000 for the death of the victim because of his accidental falling from a train carrying passengers, the respondent Railways has argued that in view of Section 124-A of the Railways Act, 1989, read with Rule 4 of the aforesaid Compensation Rules, 1990, the amount of compensation has been rightly determined by the Claims Tribunal. The specific contention raised by respondent Railways is that as per the provisions of Section 124-A the railway administration is liable to pay compensation to that extent only for which the loss occasioned by the death of a passenger as a result of such untoward incident. Rule 4 of the aforesaid Compensation Rules, 1990 provides that notwithstanding anything contained in Rule 3 the total compensation payable under that rule shall in no case exceed Rs. 4,00,000 in respect of any one person. According to the railway administration as per the Schedule prepared under Rule 3, the maximum amount in death case has been prescribed by said Rules, 1990 as Rs. 4,00,000. Therefore in view of Section 124-A as aforesaid the Claims Tribunal is to determine the extent of actual loss occasioned by the death of a passenger and to compensate the claimants accordingly. The claimants-appellants in their evidence have stated that the deceased victim had an earning of Rs. 3,000 p.m., at the time of accident. The compensation has, therefore, been rightly awarded by deducting 1/3rd amount from the aforesaid monthly income towards his personal expenses and thereby determining the actual loss suffered by the dependants, claimants-appellants herein at a lump sum of Rs. 2,00,000.

6. Substantially, the question has been posed in this appeal is whether in the case of death of a passenger by accidentally falling from a passenger train there would be a fixed amount of compensation of Rs. 4,00,000 as per the said Schedule or to the extent of actual loss suffered by the claimants-appellants as being the dependants of the said deceased.

7. The above question has been set at rest by Supreme Court decision reported in Rathi Menon Vs. Union of India, . In the said decision the Apex Court has interpreted and explained the scope and purport of the amendment to these Rules with effect from 1.11.1997 and their Lordships have held that the claimed amount should be determined on the basis of the rate prescribed by the Rules prevailing on the date of making the order for payment. Following the said decision a Division Bench of this Court in the decision reported in Sudhira Mondal Vs. Union of India (UOI) and Others, , has further held that there being no dispute that as per the Rules as on the date of making of the order in the claim case the prescribed rate of compensation for death as per the Schedule being Rs. 4,00,000 the claimants-appellants should be entitled to the said amount of compensation of Rs. 4,00,000 and not any lesser amount.

8. On plain reading of Section 124-A of the Railways Act, 1989 and the relevant Rule 3 of Compensation Rules, 1990 along with Part 1, it is abundantly clear that the amount of compensation payable in case of death has been specified in Part 1 of the said Schedule without making any restriction. The language is very clear and it speaks that the railway administration shall be liable to pay compensation that may be prescribed. Part 1 of the Compensation Rules, 1990, has prescribed the amount of compensation for loss occasioned by death. Upon a conjoint reading of the aforesaid provisions of the Act and the Rules framed thereunder, it nowhere gives an impression that the compensation for loss occasioned by death would be up to the maximum of Rs. 4,00,000 subject to the actual loss suffered by the claimants-appellants. Any other reading of the Rules, 1990 would be to the effect of bringing an extraneous import in the aforesaid provision which has not been intended by the legislation. Part 1 of the Schedule framed under Rule 3 of the aforesaid Compensation Rules, 1990, also does not indicate that in case of death, compensation of Rs. 4,00,000 as prescribed therein would be the maximum limit subject to the actual loss suffered by claimants-appellants. On all such reasoning we are unable to accept the contention put forward by the railway administration.

9. Since the compensation in case of death of a passenger covered u/s 124-A has, for the present been prescribed under the relevant Rules, namely, the Railway Accidents and Untoward Incidents (Compensation) Rules, at Rs. 4,00,000 the dependants of the deceased passenger are entitled to receive the said amount and the railway administration is liable to pay the same to the dependant/claimants for the loss suffered by them.

10. In this regard it may also be stated that the deceased, on the date of his death, was aged about 24 years. Even if we proceed on the basis of loss suffered by the claimants-appellants then the yearly loss would come to Rs. 24,000 by deducting 1/3rd of his monthly income towards his personal expenses had he been alive. The deceased could have been easily expected to live for another 26 years. In such event the extent of loss suffered by the claimants-appellants would have been much more than the amount prescribed under Part 1 of the Schedule to the aforesaid Compensation Rules.

11. In all these views, we modify the impugned judgment and award and thereby direct the respondent railway authorities to pay a sum of Rs. 4,00,000 by way of compensation for the death of the victim in a train accident. The respondent herein, the Union of India, is accordingly directed to pay the aforesaid amount of Rs. 4,00,000 less the amount, if any, already paid to the claimants-appellants within a period of 4 weeks from the date of communication of this order. The appellants will also be entitled to interest at the rate of 10 per cent per annum on the aforesaid sum of Rs. 4,00,000 from the date of the order of the Claims Tribunal, i.e., on 25.1.2002, till actual payment. The said amount of compensation shall be distributed in the same proportion as has been directed by the Claims Tribunal. It is further recorded that if the children have not yet

attained majority then their share of compensation shall be deposited in any nationalised bank in a fixed deposit for the period till they attain majority. However, the mother, being the guardian of the minors, shall be entitled to periodical interest. It is further recorded that the Union of India shall draw account payee cheques in favour of each of the claimants-appellants for their respective shares in the aforesaid amount of compensation and such cheques shall be handed over to them directly through the concerned Claims Tribunal upon proper receipt.

The appeal is thus allowed.

P.N. Sinha, J.

12. I agree.

